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3 Eastern District of Washington  
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ORIGINAL

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

APR 22 2014

SEAN F. McAVOY, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 DEREK JAMES HERNANDEZ,  
15 Defendant.

Case No.: 2:13-PO-80012-JTR

UNSUPERVISED PRE-  
TRIAL DIVERSION  
AGREEMENT

18 Plaintiff United, States of America, by and through Michael C. Ormsby,  
19 United States Attorney, Caitlin Baunsgard, Assistant United States Attorney, and  
20 Joseph Sullivan, Law Clerk, United States Attorney's Office for the Eastern  
21 District of Washington, and Defendant, DEREK JAMES HERNANDEZ, and the  
22 Defendant's counsel, Amy Rubin, of the Federal Defenders of Eastern Washington  
23 and Idaho, agree to the following Unsupervised Pre-Trial Diversion Agreement  
24 ("Agreement").

ORIGINAL

U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
JULY 10 2014

APR 23 2014

RECEIVED

U.S. DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

1 The Defendant is before the Court currently charged under Violation Notice  
2 Number P0580467 (ECF. 1, 2:13-PO-80012-JTR) for Misappropriation of  
3 Property, in violation of 36 C.F.R. § 2.30(a)(1), issued on September 19, 2013.

4 The United States and the Defendant agree that this case shall be continued  
5 until April 22, 2015, and thereafter dismissed, without prejudice upon motion by  
6 the United States, provided the Defendant abides by all the conditions and  
7 requirements herein outlined. If the Defendant completes all of the Conditions of  
8 Unsupervised Pre-Trial Diversion, as outlined below, by October 22, 2014, the  
9 United States will not oppose the Defendant's motion for early release from this  
10 Pre-Trial Diversion Agreement. If the Defendant completes all of the Conditions  
11 of Unsupervised Pre-Trial Diversion, as outlined below, and does not violate this  
12 Agreement during its term, the United States will not oppose the Defendant's  
13 motion for dismissal with prejudice so long as that motion is made after October  
14 22, 2015.

#### 15 FACTUAL BACKGROUND

16 The United States and the Defendant stipulate and agree that the following  
17 facts are truthful and accurate and form a sufficient basis for a finding of guilt for  
18 Misappropriation of Property, in violation of 36 C.F.R. § 2.30(a)(1); that the  
19 United States could prove these facts beyond a reasonable doubt at trial; and that  
20 these facts can be used as a basis for making findings and entry of judgment per  
21 the terms of this Agreement.

22 On or about September 19, 2013, at #4 Sherman Homes Spur Road, Kettle  
23 Falls, Washington, in the Lake Roosevelt National Recreation Area, in the Eastern  
24 District of Washington, the Defendant did exercise unlawful possession over the  
25 property of Bruce Brauner, to wit: a bicycle, for the purpose of depriving Mr.  
26 Brauner of that bicycle. At the time, Defendant was disoriented and under the  
Unsupervised Pre-Trial Diversion Agreement - 2



1 influence of an unknown substance. A neighbor contacted the Defendant and  
 2 convinced him to return the bicycle to its lawful owner. National Park Service  
 3 Rangers Mitchell and Rutter contacted the Defendant and issued him a citation.  
 4 The Rangers transported the Defendant and released him into the custody of his  
 5 father.

6 ACCEPTANCE OF PRE-TRIAL DIVERSION AND  
 7 STIPULATION OF FACTS

8 The Defendant hereby:

9 1. Accepts and agrees to pursue and complete the terms and conditions of  
 10 this Unsupervised Pre-Trial Diversion Agreement ("Agreement");

11 2. Understands that if he fails or neglects to comply with any part of the  
 12 terms and conditions of the Agreement, then the Court will hold a hearing to  
 13 determine whether judgment should be entered as charged for Misappropriation of  
 14 Property, in violation of 36 C.F.R. § 2.30(a)(1). After the hearing, the Court will  
 15 either order that Defendant continue with the conditions of his unsupervised pre-  
 16 trial diversion, order additional conditions, or be removed from pre-trial diversion  
 17 and enter judgment on the charges.

18 3. Agrees that if the Court revokes the order granting this unsupervised pre-  
 19 trial diversion, the facts from the Factual Background above and any written  
 20 officer reports *\* PW AIR EM JRS TIR* and any attachment thereto will be admissible as evidence to be  
 21 used to support a finding of guilt when the Court enters judgment. Defendant  
 22 understands that by agreeing to this process, he is giving up certain Constitutional  
 23 rights. He specifically acknowledges that he is giving up the right to a trial, the  
 24 right to testify or not to testify, the right to question witnesses, the right to call  
 25 witnesses on his own behalf, and the right to present evidence or a defense.

Unsupervised Pre-Trial Diversion Agreement - 3

*\* LIMITED TO CITATION # POS80467 DATED 9-19-13*

*AND 3 PAGE INCIDENT # NP13077707 DATED 9-19-13*

1 4. Understands that he is entitled to a trial that would determine whether the  
2 United States could prove him guilty of the instant charge beyond a reasonable  
3 doubt. He does hereby, voluntarily and with knowledge of the above rights, waive  
4 his right to a trial of this case by the Court pursuant to paragraph three (3) above;

5 5. Agrees to report any potential violation of the conditions listed below to  
6 the United States Attorney's Office for the Eastern District of Washington through  
7 his attorney within one (1) business day of the potential violation. This  
8 communication should be done by telephone to (509) 353-2767.

9 CONDITIONS OF UNSUPERVISED PRE-TRIAL DIVERSION

10 The Defendant must abide by the following conditions and requirements:

11 1. Defendant shall successfully complete an accredited 8-hour Drug  
12 Awareness/Information School, or equivalent, on or by April 22, 2015.

13 2. Defendant shall provide the United States Attorney's Office of the Eastern  
14 District of Washington, through his attorney, written documentation verifying the  
15 completion of the 8-hour Drug Awareness/Information School by April 22, 2015.

16 3. Defendant shall complete at least twenty (20) volunteer hours on or by  
17 April 22, 2015.

18 4. Defendant shall provide the United States Attorney's Office of the Eastern  
19 District of Washington, through his attorney, written documentation of his  
20 volunteer hours. This verification should include the name and signature of the  
21 supervisor and contact information for the same.

22 5. Defendant shall complete these community service hours at a 501(c)(3)  
23 organization with which neither he nor his immediate family has any past or  
24 current affiliation.

25 6. Should the Defendant choose to do so, he may pay a forfeiture of \$10.00  
26 in lieu one hour of community service. Defendant may pay this forfeiture in any  
Unsupervised Pre-Trial Diversion Agreement - 4

1 amount, up to \$200.00, so long as he: actually completes 20 hours of community  
2 service; pays a total forfeiture of \$200.00; or accomplishes any proportional  
3 combination of the two. Any forfeiture must be paid to the Clerk of the District  
4 Court.

5 6. Defendant shall not violate nor be charged with or convicted of any  
6 criminal violations under federal, state, or local law before this cause is dismissed  
7 without prejudice, or judgment is entered, per the terms of this Agreement. Civil  
8 and Non-Criminal Traffic Infraction violations will not constitute a violation of  
9 this Agreement.

10 If the Defendant complies with all the obligations mentioned above, no  
11 prosecution for the conduct set out in the Factual Background section of this  
12 Agreement will be instituted in the Eastern District of Washington and the United  
13 States agrees to dismiss these charges without prejudice.

14 Should there be a violation of the terms of this Agreement, however, and the  
15 Agreement is revoked, a conviction for the charged offenses may be imposed  
16 pursuant to the procedures outlined herein. If a conviction occurs, the Defendant  
17 understands he will be subject to a sentencing which may include up to six months  
18 imprisonment and/or a \$5,000 fine.

19 ADVICE AND ACKNOWLEDGMENT OF DEFENDANT'S RIGHTS

20 I, DEREK JAMES HERNANDEZ, understand and acknowledge I have the  
21 following rights:

- 22 1. The right to a speedy and public trial in the place where the crime is  
23 alleged to have been committed;
- 24 2. The right at trial to question witnesses who testify against me;
- 25 3. The right at trial to call witnesses to testify for me;
- 26 4. The right to present evidence and a defense;

1 5. The right to appeal a judgment of guilt.

2 By entering into this Agreement I understand that I am knowingly,  
3 intelligently, and voluntarily, waiving these rights. I further understand that by  
4 continuing these charges until April 22, 2015, I am agreeing to follow the  
5 procedures outlined in this Agreement.

6 I, DEREK JAMES HERNANDEZ, hereby state that I have read this  
7 document in its entirety. I understand the conditions of my unsupervised pre-trial  
8 diversion and agree that I will comply with those conditions.

9  
10  
11 

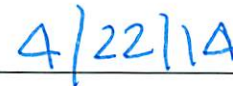


12 DEREK JAMES HERNANDEZ

Date

13 Defendant

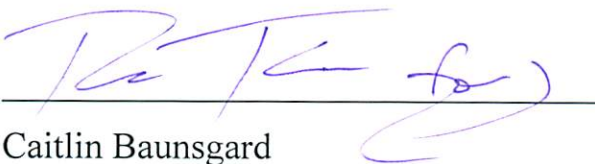
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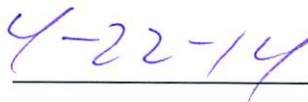


16 Amy Rubin

Date

17 Attorney for the Defendant


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19 




20 Caitlin Baunsgard

Date

21 Assistant United States Attorney

22  
23 



24 Joseph Sullivan

Date

25 Law Clerk



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11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF WASHINGTON

13 UNITED STATES OF AMERICA,  
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15 vs.

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17 Defendant.

Case No.: 2:13-PO-80012-JTR

PROPOSED ORDER  
GRANTING  
UNSUPERVISED PRE-  
TRIAL DIVERSION  
AGREEMENT

18 Upon consideration of the parties' Unsupervised Pre-Trial Diversion  
19 Agreement, and being fully advised of the facts and circumstances of this case, the  
20 Court finds the Defendant has agreed to comply with the terms and conditions of  
21 the Unsupervised Pre-Trial Diversion Agreement; that the Court finds the  
22 Defendant has acknowledged the admissibility of the stipulated facts and law  
23 enforcement reports in any criminal hearing on the underlying offense or offenses  
24 held subsequent to revocation of the order granting pre-trial diversion; that the  
25 Defendant's statements were made knowingly and voluntarily; and that the  
26 Defendant has knowingly and intelligently waived his Constitutional and statutory  
Unsupervised Pre-Trial Diversion Agreement - 7



1 rights to a speedy trial, to question those witnesses against him, to call witnesses  
2 on his behalf, and to present evidence or a defense at trial.

3  
4 NOW THEREFORE, IT IS HEREBY ORDERED:

- 5 1. The Defendant is accepted for unsupervised pre-trial diversion;  
6 2. The Defendant shall comply with all the terms and conditions as set forth  
7 in the Unsupervised Pre-Trial Diversion Agreement;  
8 3. If the Court finds that the Defendant violated any term of the  
9 Unsupervised Pre-Trial Diversion Agreement, the Court shall make findings  
10 pursuant to the procedures outlined in the Agreement.

11  
12  
13   
14 HON. John T. Rodgers  
15 United States Magistrate Judge

4-22-14  
Date